

By Senator Lawson

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1 A bill to be entitled
2 An act relating to competency in juvenile proceedings;
3 amending s. 985.19, F.S.; requiring an evaluation of
4 mental competency to proceed for every child 10 years of
5 age or younger who is the subject of a court hearing;
6 providing an effective date.

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8 Be It Enacted by the Legislature of the State of Florida:

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10 Section 1. Subsection (1) of section 985.19, Florida
11 Statutes, is amended to read:

12 985.19 Incompetency in juvenile delinquency cases.--

13 (1) If, at any time prior to or during a delinquency case,
14 the court has reason to believe that the child named in the
15 petition may be incompetent to proceed with the hearing, the
16 court on its own motion may, or on the motion of the child's
17 attorney or state attorney must, stay all proceedings and order
18 an evaluation of the child's mental condition. An evaluation
19 shall be ordered for a child 10 years of age or younger.

20 (a) A ~~Any~~ motion questioning the child's competency to
21 proceed and any subsequent motions, notice of hearing, order, or
22 other legal proceedings relating to the motion must be served
23 upon the child's attorney, the state attorney, the attorneys
24 representing the department ~~of Juvenile Justice~~, and the
25 attorneys representing the Department of Children and Family
26 Services. Thereafter, any motion, notice of hearing, order, or
27 other legal pleading relating to the child's competency to
28 proceed with the hearing must be served upon the child's
29 attorney, the state attorney, the attorneys representing the

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30 department ~~of Juvenile Justice~~, and the attorneys representing
31 the Department of Children and Family Services.

32 (b) All determinations of competency must ~~shall~~ be made at
33 a hearing, with findings of fact based on an evaluation of the
34 child's mental condition made by at least ~~not less than~~ two but
35 not ~~nor~~ more than three experts appointed by the court. The basis
36 for the determination of incompetency must be specifically stated
37 in the evaluation. In addition, a recommendation as to whether
38 residential or nonresidential treatment or training is required
39 must be included in the evaluation. Experts appointed by the
40 court to determine the mental condition of a child shall be
41 allowed reasonable fees for services rendered. State employees
42 may be paid expenses pursuant to s. 112.061. The fees shall be
43 taxed as costs in the case.

44 (c) All court orders determining incompetency must include
45 specific written findings by the court as to the nature of the
46 incompetency and whether the child requires secure or nonsecure
47 treatment or training environments.

48 (d) For incompetency evaluations related to mental illness,
49 the Department of Children and Family Services shall maintain and
50 annually provide the courts with a list of available mental
51 health professionals who have completed a training program
52 approved by the Department of Children and Family Services to
53 perform the evaluations.

54 (e) For incompetency evaluations related to mental
55 retardation or autism, the court shall order the Agency for
56 Persons with Disabilities to examine the child to determine if
57 the child meets the definition of "retardation" or "autism" as

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58 defined in s. 393.063 and, if so, whether the child is competent
59 to proceed with delinquency proceedings.

60 (f) A child is competent to proceed if the child has
61 sufficient present ability to consult with counsel with a
62 reasonable degree of rational understanding and ~~the child~~ has a
63 rational and factual understanding of the present proceedings.
64 The report must address the child's capacity to:

- 65 1. Appreciate the charges or allegations against the child.
- 66 2. Appreciate the range and nature of possible penalties
67 that may be imposed in the proceedings against the child, if
68 applicable.
- 69 3. Understand the adversarial nature of the legal process.
- 70 4. Disclose to counsel facts pertinent to the proceedings
71 at issue.
- 72 5. Display appropriate courtroom behavior.
- 73 6. Testify relevantly.

74 (g) Immediately upon the filing of the court order finding
75 a child incompetent to proceed, the clerk of the court shall
76 notify the Department of Children and Family Services and the
77 Agency for Persons with Disabilities and fax or hand deliver to
78 the department and to the agency a referral packet that includes,
79 at a minimum, the court order, the charging documents, the
80 petition, and the court-appointed evaluator's reports.

81 (h) After placement of the child in the appropriate
82 setting, the Department of Children and Family Services in
83 consultation with the Agency for Persons with Disabilities, as
84 appropriate, must, within 30 days after placement of the child,
85 prepare and submit to the court a treatment or training plan for
86 the child's restoration of competency. A copy of the plan must be

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87 | served upon the child's attorney, the state attorney, and the
88 | attorneys representing the department ~~of Juvenile Justice~~.

89 | Section 2. This act shall take effect July 1, 2008.